

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

PETER J. MILLER, an individual,
CLIFFORD HOYT, an individual, and
CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.,
a Delaware corporation,

Plaintiffs,

v.

PATRICK TREADO, an individual, and
CHEMIMAGE CORP., a Delaware
corporation,

Defendants.

Civil Action No. 05-10367-RWZ

PLAINTIFF'S MOTION TO CONSOLIDATE UNDER FED.R.CIV.P. 42(a)
PLAINTIFFS' RECENTLY FILED ACTION WITH THE PRESENT LITIGATION

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the plaintiffs, Peter J. Miller, Clifford Hoyt, and Cambridge Research and Instrumentation, Inc. (collectively, “plaintiffs”), hereby move to consolidate plaintiffs’ recently filed action, *C.R.I. et al. v. ChemImage et al.*, Civ. Act. No. 06-11479-RWZ, with the present above-identified litigation.

Pursuant to LR 7.1(a)(2), counsel for plaintiffs certify that they have attempted to confer with counsel for defendants in a good faith attempt to obtain defendants’ assent to the present motion, and counsel for defendants have not consented to the filing of this motion.

Pursuant to LR 7.1(b)(1), plaintiffs are concurrently filing a memorandum of reasons, including citations to supporting authority, why this motion should be granted.

In support, plaintiffs state as follows:

1. Plaintiffs filed the complaint initiating the present action on February 24, 2005. Complaint [D.E. 1].
2. Plaintiffs filed a motion for leave to file an amended complaint in the present action on May 31, 2006. Motion [D.E. 40]. This motion is pending.
3. To avoid possible statute of limitation issues, plaintiffs filed a new complaint on August 21, 2006, having substantially the same claims as the new claims in the proposed amended complaint filed on May 31, 2006. See *C.R.I. et al. v. ChemImage et al.*, Civ. Act. No. 06-11479-RWZ ("the new case").
4. At least because (a) the present action and the new case have identical plaintiffs and defendants; (b) the new claims in the proposed amended complaint in the present action are substantially identical to the claims in the complaint in the new case; (c) the present action and the new case share common questions of fact and law; (d) discovery in the present action is still in its initial phase (no depositions have been taken) and discovery in the new case obviously has not yet started; and (e) consolidating the two litigations will result in greater judicial economy and savings in time, effort or expense for both the Court and the parties, plaintiffs move herein to consolidate the two litigations.
5. Pursuant to LR 40.1(J), this motion to consolidate the present action and the new case is being filed in the case that was filed first, namely, the present action.

WHEREFORE, plaintiffs respectfully request that the Court:

- A. Issue an order consolidating the present action, Civ. Act. No. 05-10367-RWZ, with plaintiffs' new case, Civ. Act. No. 06-11479-RWZ, for purposes of convenience and efficiency, and

that the consolidation order also set forth a date for a LR 16.1(a) scheduling conference, so that the parties may confer concerning a new scheduling order reflecting the increased scope of discovery in the consolidated actions;

B. If the Court grants consolidation, consider plaintiffs' motion [D.E. 40] for leave to file an amended complaint (i.e., do not dismiss or deny as moot), at least insofar as Massachusetts liberal "relation-back" policy applies to claims in plaintiffs' proposed amended complaint and not to the identical claims in plaintiffs' complaint in the new case; and

C. Grant such further and other relief as this Court deems just, equitable and proper.

Respectfully submitted,

**PETER J. MILLER, CLIFFORD HOYT,
and CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.,**

By their attorneys:

Dated: September 15, 2006

/s/ Teodor Holmberg
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CERTIFICATE OF SERVICE

I hereby certify that the document identified in the top right-hand portion of this page and filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on September 15, 2006.

/s/ Teodor Holmberg
Teodor J. Holmberg (BBO# 634708)